

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

**CHARLES THOMAS,**

**Plaintiff,**

**v.**

**JOHN ASHCROFT, et al.,**

**Defendants.**

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**CIVIL NO. 3:CV-05-0090**

**(Judge Caputo)**

**ORDER**

Charles Thomas, formerly<sup>1</sup> an inmate at the Allenwood Low Security Correctional Institution in White Deer, Pennsylvania, commenced this *pro se* action with a *Bivens*<sup>2</sup> civil rights complaint (Doc. 1). Plaintiff complains about erroneous entries in his prison records, incorrectly identifying him as a sex offender.

Presently before the Court is the Defendants' motion to dismiss and for summary judgment (Doc. 38). A brief in support of the motion, a statement of material facts, and exhibits were timely filed. Although Plaintiff's brief in opposition to the motion and counter-statement of facts are now overdue, he has neither made an appropriate filing nor requested an extension of time in which to do so.

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<sup>1</sup>Plaintiff has notified the Court that his current address is Luzerne Correction Center, 600 E. Luzerne Street, Philadelphia, Pennsylvania. (Doc. 46 at 2.)

<sup>2</sup>*Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). *Bivens* stands for the proposition that "a citizen suffering a compensable injury to a constitutionally protected interest could invoke the general federal question jurisdiction of the district court to obtain an award of monetary damages against the responsible federal official." *Butz v. Economou*, 438 U.S. 478, 504 (1978).

A dispositive motion generally may not be granted merely because it is unopposed. Since Local Rules of Court must be “construed and applied in a manner consistent with the Federal Rules of Civil Procedure,” *Anchorage Assoc. v. Virgin Islands Board of Tax Review*, 922 F.2d 168, 174 (3d Cir. 1990), the disposition of an unopposed motion ordinarily requires a merits analysis.

Based on his failure to take any action in response to the Defendants’ motion, it would appear that Plaintiff may have abandoned interest in pursuing this matter. However, the court will grant additional time for the Plaintiff to respond to the motion and direct him to file a brief in opposition, a counter-statement of facts, and any exhibits within twenty (20) days. If Plaintiff fails to oppose the motion or otherwise communicate with the court within twenty (20) days of the date of this Order, the Court will consider the motion to dismiss unopposed and grant dismissal without a merits analysis. Moreover, upon failure of Plaintiff to oppose the Defendants’ motion, the Court may consider dismissing this case for failure to prosecute and failure to comply with a court order under FED.R.Civ.P. 41(b).

**ACCORDINGLY, IT IS HEREBY ORDERED THAT:**

Plaintiff shall file a brief in opposition to Defendants’ motion, a counter-statement of facts, and exhibits within twenty (20) days of the date of this Order. If Plaintiff fails to timely oppose the motion or otherwise communicate with the court the court will grant the unopposed motion to dismiss without a merits analysis, and the Court will also consider dismissing the case for failure to prosecute and failure to comply with a court order under FED.R.Civ.P. 41(b).

Dated: August 10, 2005

/s/ A. Richard Caputo  
A. RICHARD CAPUTO  
United States District Judge